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# HISTORICAL FACTS

AND

EXPLANATIONS REGARDING THE SUCCESSION

TO THE

LORDSHIPS, BARONIES,

AND

**FREE REGALITY OF DRUMMOND**

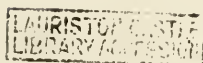
**AND EARLDOM OF PERTH.**



**PARIS,**

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—  
1866.



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TO HER


MOST GRACIOUS MAJESTY QUEEN VICTORIA.

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*A few historical facts and explanations, regarding the Succession to the Lands, Domains, and Baronies in Perthshire, forming the Lordship, Barony, and Free Regality of Drummond, afterwards Earldom of Perth, settled for above twenty generations by Royal Charters and family entails to descend in the same channel, and conjointly with the Peerages of Drummond and Earldom of Perth, to the heirs male, chiefs male of the House and Clan of Drummond.*

**PERTH and MELFORT.**

1866.



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# DRUMMOND OF DRUMMOND, PERTH, MELFORT, STRATHALLAN, AND MADDERTY FAMILY.

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Sir John Drummond of Cargill, Lord of that ilk and Stobhall, succeeded his father in 1470, as fifteenth Chief of the House of Drummond and hereditary Thane of Lennox, and Steward of Strathearne.

In August, 1484, he was appointed by King James III. Ambassador to England, to treat with Richard III. about a cessation of war, which was fixed for three years between the two kingdoms. In this negociation Sir John Drummond's conduct gave great satisfaction to His Majesty and the whole nation; and, at the next Parliament, he was raised to the dignity of the Peerage, by the title of Lord Drummond, on the 14th of January, 1487.

Lord Drummond was soon after promoted to be Justiciary-General of Scotland, but his connection with Archibald the fifth Earl of Angus, whose son and heir had married Lord Drummond's daughter, had exposed him to many hazards; he had assisted to purge the Court at Lauder of some obscure persons who had abused the favour of James III., and in 1488, he was unhappily engaged with the Earl of Angus among the Confederate Lords, with the son against the father at the battle of Sauchenford. Soon after the coronation of James IV., he evinced his loyalty and

fidelity, when the Earl of Lennox, Lord Lyle, and others of the faction took arms, and justified their rebellion on pretence of revenging the death of the late king; Lord Drummond was sent to stop the progress of Lennox, and assaulting his camp at Tillymoss, overpowered the forces he had collected, and totally dispersing the insurrection, strengthened the new established government, and restored peace and quiet to the whole nation; the king treated him with great kindness, appointed him one of the Privy Council, *and gave him a licence under the great seal to build a castle on the lands of Concraig*, which he had lately acquired, and he gave it the name of Drummond Castle, and left Stobhall, the old residence; and Drummond Castle has ever since been the chief seat of the family. In 1495 he was appointed Ambassador to England, and again in 1503, 1511, and 1513.

Lord Drummond was also one of the Scottish nobles who signed the answer of refusal to the King of England; who had advised the removal of the Duke of Albany from the guardianship of the young king, to which document his seal is appended 4th July, 1516. This is the last time we find him engaged in any public business.

In his old age an unfortunate accident occurred, which distressed this great old man.

He had promoted the marriage of his grandson, the Earl of Angus, with Margaret Tudor, the widow of King James IV., by causing his brother Walter's son, John Drummond, Dean of Dunblane, to solemnise the matrimonial bond in the Kirk of Kinnoull, in 1514. This marriage gave great offence to the rulers of the State, and the Earl of Angus and Lord Drummond were cited to appear before the Council, and the Lord Lion, King-at-Arms, was employed to deliver the charge. But Lord Drummond thinking that he had approached them with more boldness than discretion, gave him a box on the ear, whereupon the Lord Lion complained to the Duke of Albany, then Regent, and at the instigation of his enemies, Lord Drummond was imprisoned in Blackness Castle, tried capitally, found guilty, and his estates forfeited to the Crown; but in the next Parliament 1516, the attainder was repealed, and Lord Drummond restored to his dignities and honours, but his estates remained forfeited, and were only restored to his great-grandson, David, second Lord Drummond.

David, son of Walter, second Master of Drummond, and grandson of William, first Master of Drummond, succeeded upon the death of his great-grandfather, in 1519, as second Lord

Drummond, and being very young, became the King's ward; this charge, King James V., entrusted to Sir Robert Bartone, comptroller, and he executed it with the highest honour and fidelity. During his minority, he received an education suited to his high rank, and when he was introduced at Court he was much noticed by the King. For in 1525, John, Duke of Albany, Governor of the Kingdom in the King's name, entered into an obligation with his tutor, Sir Robert Bartone, to restore to Lord Drummond, and give him full possession of all the lands which belonged to his great-grandfather, John, first Lord Drummond, before his late forfeiture, on condition, that when he came to maturity, he should marry the King's niece, Lady Margaret Stuart, the daughter of Alexander, Duke of Albany; this marriage with the King's niece was solemnised in 1535, and among the many charters, under the Great Seal, in favour of David, Lord Drummond, between 1530, and 1542, there is a charter of the King's, in 1538, granted to Lord Drummond, who had married the King's niece, as a confirmation of part of the estates forfeited by the late Lord Drummond, whereby it appears that the mutual engagements made by John, Duke of Albany, for the King, and by Sir Robert Bartone, for the young Lord Drummond, were punctually observed. And in 1542, he got a new investiture of the whole estates by a charter under the great Seal (which is registered), 25 of October, 1542, in which are particularly specified all his Lands, Lordships, and Baronies, "To and in favour of David Lord Drummond, great-grandson and heir of the deceased John Lord Drummond, and "the *heirs male of his body*, which failing, to John Drummond of "Inner Paffrey, and the *heirs male of his body*, then to Andrew "Drummond, of Ballyclone; then to Henry Drummond of "Riccartoun; then to William Drummond, of Smithstoun; and "the *heirs male of their respective bodies, which all failing*, to "the said Lord David his *nearest heirs whatsoever*."

It was the fate of David Lord Drummond to live in those troublesome times, which distinguished the reign of Queen Mary, he kept himself free from those factions and cabals which long disturbed the kingdom, and at last overwhelmed the beautiful and unfortunate Princess, and when at last he beheld her reduced to great extremities, he joined the band of noble loyalists, who boldly associated for her defence, and bound themselves by a solemn oath to protect and defend her against all mortals.

David, second Lord Drummond, died in 1571, and was succeeded by his eldest son Patrick; his second son James, was created Lord Madderty, and was ancestor of Viscount Strathallan, and the families of Drummond, of Stanmore, Drumtochty, Cad-



land, the Grange, &c., (1) Patrick, third Lord Drummond, had two sons, James and John, and was succeeded by his eldest, James.

James, fourth Lord Drummond, was created Earl of Perth, on the 11th of February, 1605; he died in 1611, leaving an only daughter, Lady Jane Drummond, who married the Earl of Sutherland, and was succeeded in his estates and honors by his only brother, John Drummond, who became second Earl of Perth, and who succeeded to all the Perth estates, as heir male of the family; he died in 1662, and was succeeded by his eldest son, James Lord Drummond.

James Lord Drummond, on the death of his father, in 1662, became third Earl of Perth, he had two sons, James and John, and died in 1675, and was succeeded by his eldest son, James Lord Drummond, who became fourth Earl of Perth, and Chancellor of Scotland. His second son, John Drummond, was created Viscount Melfort, 20th April, 1685, and Earl of Melfort, 12th August, 1686. (see p. 23.)

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(1). The present Viscount Strathallan, Lord Madderty, the Drummonds of Stanmore, Drumtochty, Cadland, the Grange, &c., &c., &c., are all male descendants, also, of the body of David, second Lord Drummond, and the Drummonds of Lennox Megginch, &c., &c., &c., descend from Sir Malcolm Drummond, tenth Thane of Lennox, and would, according to the old settlement of 1542, as well as by the settlement of October 11, 1687, succeed in succession in their turn, and become chiefs of the House of Drummond, and as heirs male of the family succeed to the peerages of Lord Drummond and Earl of Perth, and to the whole of the estates, according to the entails and charters, before the estates could by the extinction of all the heirs male, and the extinction of the peerages of Drummond and Perth, pass to a female.



# DRUMMOND AND PERTH ESTATES

## AND PEERAGES.

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James Lord Drummond, eldest son of James Drummond, third Earl of Perth, became fourth Earl of Perth, and Chancellor of Scotland (at that period it was the first office in the kingdom, and the same as viceroy). He resigned his Estates in favour of his son, and when King James II was obliged to retire to France, being attached to that unfortunate King by ties of blood and of friendship, he attempted to follow the King, and escape in a small vessel to France, with his family, but being pursued, he was seized and brought back, and confined in the castle of Stirling, a prisoner for five years, and was only set at liberty and allowed to leave the kingdom in 1693, under a fine of £5,000.

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Extracts from James Drummond's (the late Baron Perth) printed case (House of Lords, 1794), claiming the Peerages of Earl of Perth, Lord Drummond of Stobhall and Montefex, 1605, and the Barony of Drummond, 1487.—Signed by W. Grant, W. Adam and W. Dundas.

“The patent of 1487, conferring the honours of Lord Drummond, does not exist, nor does the limitation of these honours anywhere positively appear. But the settlement of the estates have for near three centuries stood uniformly in favour of *heirs male*.

“Neither does the patent of 1605, conferring the honours of Earl of Perth, exist, nor does the limitation of these honours anywhere appear. But it is a fair presumption that the title of Earl of Perth was limited to the same series of heirs to whom the title of Lord Drummond and the *family estate stood limited*, and these heirs, in *the most confined line* that can be supposed,

“were the *heirs male* of the body of John Drummond of “Carghill, the first Lord Drummond (1).

“On the 11th day of October, 1687, James, the fourth Earl of “Perth and Chancellor of Scotland, *executed a settlement of “strict entail of his estate*, and soon after, viz.: on the 17th of “November, 1687, a charter of Novodæmus (2) was granted to his “son *James Lord Drummond, by King James II, in terms of “the entail whereby the estate was settled upon the same series of “heirs to whom the title was soon after limited. He likewise “resigned his honours in the King’s hands and of this date received “a new patent. To himself and his eldest lawful son and his heirs “male, whom failing, to the Earl’s other issue male procreated or “to be procreated, whom failing, to the Earl’s brother german “(the ~~second~~ Earl of Melfort), and his heirs male. Whom all fail- “ing to the heirs male of John, second Earl of Perth” (3).*

(1) Records of charters, viz.: B. 28, No. 362; 25 Oct., 1542. B. 29, No. 315, 7 Dec., 1543. B. 43, No. 274, 24 Feb., 1609. B. 48, No. 27, 23 Nov., 1615. B. 49, No. 271, 20 July, 1620. B. 49, No. 390, 19 April, 1620. B. 55, No. 359, 15 July, 1637. B. 65, No. 110, 8 Dec., 1676. B. 67, No. 110, 24 Sept. 1679.

(2) A Novodæmus is generally obtained, as seems to have been the case in the present instance, in order to obtain a *Ratification of the prior titles of the estate*.

“In the hurry of the busy period between the date of this new patent of “honour, viz., 17 Dec., 1687, and the Revolution, it is supposed that the Earl of “Perth omitted to get that patent put upon record, and it is not now to be “found upon Register.

“It appears that on the 20th of Sept., 1693, or about that time, when the “Earl of Perth, who had been confined in the castle of Stirling a prisoner “near five years, was at last set at liberty in giving security, in the penalty of “£5,000 sterling, that he would depart the kingdom before the 5th of August, “1693 (which time was prolonged), was going into exile, there was deposited in “the hands of the Earl of Tweeddale, who had succeeded the Earl of Perth in “the office of Chancellor of Scotland, the aforesaid patent and sundry other “writings, the nature of which best appears from the receipt given for the “same, and which is in the following words.”

(3) It must be observed that, as in 1687, John Drummond, brother german of James, fourth Earl of Perth, the Chancellor, was already himself created Earl of Melfort, it would be absurd to believe that the Chancellor could have resigned the Perth Peerage, and obtained from the Crown a new patent of his honours, 17th of December, 1687, with *the remainders* to his

Documents and other Muniments pertaining to the Earl of Perth, and deposited in my custody, at Yester, this 20th day of September, 1693.

“A charter (sig. Mag) for the Earldom of Perth and Baronie and Lordship of Drummond and Stobhall, granted in favour of James Lord Drummond, and *his heirs male*, whom failing, to his *heirs male whatsoever*, whom failing, to his heirs and assigns whatsoever, bearing date at Whitehall the 17th of November, 1687.

“Diploma (de Novodœmus, sig. Mag), tituli and digni “Comit.” de Perth and Dom. de Drummond, Stobhall, and Montifex, granted to the Earl and his eldest lawful son, and his heirs male, whom failing, to the Earl’s other issue male procreated or to be procreated, whom failing to the Earl’s brother german (the Earl of Melfort) and his *heirs male*; whom all failing to the heirs male of John, second Earl of Perth. — Whitehall, 17th December, 1687.

“A bond of provision, by the Earl of 40,000 Merks in favour of his younger sons, William and Edward, at Drummond, the 15th July, 1693.

“Order and warrant from the Lords of their Majesties Privy Council to Lieut. Col. John Erskine, Deputy Governor of Stirling Castle, or other officer commanding there to let at

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brother german, and his heirs male, whom all failing, with a *second remainder* to the heirs male of John, second Earl of Perth, unless he had already on the 11th of October, strictly entailed the Perth Estates, *with the same remainders* to the collateral heirs male of the family, with exactly the same destination as the Perth Peerage.

There was another Charter with irritant clauses, which was seen and copied in Edinburgh, in the year 1783; but which at present cannot be found. It is mentioned in Vicomte de Melfort’s statements at the time, and was translated into French, by the late Duke of Melfort, in 1808, and is also printed in Drummond and Biddick’s case, 1834.

This Charter contained a prohibition to alter the course of succession, sell, or alienate, or dispose of the lands, a prohibition to commit treason, with an *irritant* and *resolutive* clause. A prohibition against Lord Drummond contracting debts or doing any other deed, by which the Estate might be apprized, adjudged, or evicted; with a declaration that if the heirs of succession should do anything contrary to the provisions expressed, then such acts and deeds should be null and void, and the contravener for himself and descendants should forfeit the right to the Estate, and the same should belong to the next heir.

“liberty furth of the said castle the Earl of Perth, presently  
“prisoner therein in respect he has found bond subscribed be  
“sufficiencie of Persons in the Penaltie of £5,000, that he shall  
“depart furth of their Majesties Dominions betwixt the 5 of  
“Aug. next to come, and never to return thereto without their  
“Majesties or the Privy Councils leave for that effect; and that  
“in the mean time he shall live peaceably under and with all  
“submission to the present government of their Majesties King  
“William and Queen Mary, and that he shall appear when  
“called for (if called for) betwixt and said day under the penalty  
“as supra, in case he shall transgress in any part of the premise,  
“and bearing date Edinb., 28th June, 1693.

“Order and warrant of their Majesties Privy Councils to  
“prorogate the time of the Earl’s departure furth of their king-  
“doms till the sailing of the first ship which shall sail under  
“convoy to foreign countries. Ed., Aug. 4, 1693.

“Signed      TWEEDALE,  
                         “*Chancellor.*”

“The whole of this receipt as well as the subscription is of the  
“handwriting of the Earl of Tweeddale; the patent itself cannot  
“be found (1), although the most diligent search has been made  
“for it, as well among the papers of the present Marquis of  
“Tweeddale as in any other place where there was the least pro-  
“bability it might be. But it is hoped that the receipt, under  
“all the circumstances attending it, will be admitted to be as  
“explicit and satisfactory as the original patent itself would  
“have been if the same could have been produced.

“Signed      W. GRANT,  
                         W. ADAM,  
                         W. DUNDAS.”

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(1) The settlement of the estate of Perth made by the fourth Earl of Perth (the Chancellor) on the 11th of Oct., 1687, viz. to himself and his eldest lawful son and his heirs male, whom failing, to the Earl’s other issue male procreated or to be procreated, whom failing, to the earl’s brother german (the Earl of Melfort) and his heirs male, whom all failing, to the heirs male of John, second Earl of Perth, which was in the same terms and just preceded the new patent of the honours of Perth, was produced in 1794, but is now either at Drummond Castle or lost.

Extract from the Perthshire register, 1851.

## CRIEFF.

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CRIEFF. “Was the head burgh of the Stewartry of Strathearn  
“and the Regality of Drummond. The Earls of Perth, Lords of  
“the Regality were heritable Stewards and Coroners within the  
“bounds of Strathearn, Glenartney and Balquhiddar, with the  
“right and jurisdiction of free regality, forestry, and bailiary.—  
“James the Second, on the resignation of *the Earl of Perth, Lord*  
“*Chancellor of Scotland*, of new erected, created and incorpo-  
“rated the several lands, lordships, baronies, castles, towers,  
“fortalices, and heritable offices, which were comprehended within  
“the regality of Drummond into *ane haill and free Earldom*,  
“Lordship and Barony, called the Earldom of Perth, Lordship  
“and Barony of Drummond; ordaining the tower and fortalice  
“of Drummond to be the principal *Messuage to be holden of*  
“*the Crown in Free Earldom*, Lordship and Barony, *with the said*  
“*heritable offices*, jurisdiction, rights and privileges of justiciary,  
“free forestry and coronery respectively (1)”.

The Perth estates were forfeited by the attainder of John Drummond (styled Lord John Drummond), 19 Geo. II., C. 25, and the vesting Act, 20 Geo. II., 11 April, 1746, with regard to the property of persons attainted of high treason; the forfeiture to the crown applied to all lands, in which the party was either seized or possessed of or interested in. According to the interest they had in them, as they could not forfeit more than

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(1) These particulars regarding Crieff, and the settlements of the estate and honours of Perth were altered in 1853, and have been entirely withdrawn from the new publication of the Perthshire register, since the restoration of the Duke de Melfort to the Earldoms of Perth et Melfort, in 1853. But they are exactly the details of the charter, of the 11th of October, 1687, which is not forthcoming; but to which James Drummond refers in his memorial, 1794, and which extended the remainder not only to the Earl of Melfort and his heirs male, but to the *issue male* of John, second Earl of Perth.



they had to give. Even if the charter was not of the nature of an entail, but was merely a *destination in Fee simple*, Lord John Drummond would only then have become entitled, on the death of his brother James Drummond (Duke of Perth), to the Perth estate in property, and in that case the subsequent attainder would (as assumed) have carried these estates entirely to the crown; *but by the settlement of the 11th of October, 1687, James, the fourth Earl of Perth, Chancellor of Scotland, did settle the Perth estates upon the same series of heirs male to whom the Perth Peerage was very soon after limited (17 December, 1687), viz. : “To himself and his eldest lawful son, and his heirs “male, whom failing, to the Earl’s other issue, procreated or to “be procreated, whom failing, to the Earl’s, brother german (the “Earl of Melfort), and his heirs male, whom all failing, to the “heirs male of John, second Earl of Perth.”* This settlement is proved by James Drummond’s case, 1794, and the Perthshire register. (See 1851, at Crieff.) (See the settlements and resignation of the Perth Estates, or Earldom of Perth, made by the Earl of Perth, Chancellor of Scotland, in 1687 and 1688, before the Revolution, in favour of his son James Lord Drummond.)

Therefore, by his attainder, Lord John Drummond could only forfeit the interest he had in the estate, which could only have been a life interest, and the estate was undeniably saved by the irritant clauses or remainders in the Act of Settlement of the 11th of October, 1687; the settlement of 1688; “and also by “the resignation and settlement of the Estates, of the 28th of “August, 1713, by James Lord Drummond, in favour of his son “the Master of Drummond, by which for the love, favour, and “affection, which he bore James, Master of Drummond, his son, “and for the well and standing of his family, and other weighty “motives and considerations he gave, granted, and disposed to, “and in favour of the said James, Master of Drummond, and the “*heirs male* of his body, which failing, the said Master of “Drummond his other *heirs male whatsoever*, which all failing “(as God forbid) his other heirs, and assignees whatsoever “heritably and irredeemably, etc.; all and haill the Lands “Lordship, and Baroney, and Regallity of Drummond and

“Earldom of Perth.” The existence of which settlements is clearly proved even by James Drummond’s (the late Baron Perth) own case, printed for the House of Lords in 1794, as well as by the records of Crieff, as reported in the Perthshire register of 1851 ; and the minutes of the House of Lords. And the Estate was saved for the next heirs male, on the death of Lord John Drummond, according to the application of the doctrine of the King’s advocate V. Gordon and many others, according to the general principle as established by the decisions of the Courts of Scotland.

The Perth estates, so entailed, were restored by an Act of Parliament, passed in 24 George III (18 May, 1784), entitled “*An Act to enable his Majesty to grant to the heirs of the former proprietors, upon certain terms and conditions, the forfeited estates in Scotland; which were put under the management of a board of trustees, by an Act passed in the 25th year of the reign of his late Majesty King George the Second, and to repeal the said Act,*” and the provision of the said Act, in reference to the Perth estates, was in the following words :

C. 57, S. X. “And whereas the estate of Perth, which became forfeited by the attainder of John Drummond, taking upon himself the style or title of Lord John Drummond, brother of James Drummond, taking on himself the style or title of Duke of Perth, stood devised before the forfeiture to *heirs male*; and whereas the said John Drummond, died without leaving issue lawful of his body, and it is not yet ascertained who is his nearest collateral *heir male*; be it enacted by the authority aforesaid, that it shall and may be lawful to his Majesty, his heirs and successors, to give, grant, and dispose to the *heirs male* of the said John Drummond, who would have been entitled to succeed by the investitures of the said estates, *had it not been forfeited, and to the heirs and assigns of such heir male.* All and every the Lands, Lordships, Baronies, Fisheries, Tithes, Patronages, and other heritages and estates, which became forfeited to his said late Majesty by the attainder of the said John Drummond, taking upon himself the style or title of Lord John Drummond, and which were annexed to the Crown as afore-



“said, subject always to, and chargeable with, the sum of fifty  
“two thousand five hundred and forty seven pounds, one shilling  
“and six pence, and three twelfth parts of a penny sterling,  
“of principal money, to be paid into the said Court of Exche-  
“quer, as after directed.”

But the above 57th clause S. X., of the Act 24 George III (18 May, 1784), which legally restored the Perth estates to the *heirs male*, was altered as mentioned in the Declaration (see Minutes of evidence admitted by the House of Lords, in the Perth Peerage case, p. 288 & 309), Captain James Drummond against a person who represented himself as John Drummond (8 March, 1785, Register House, Edinburgh), and the phrase : “ To give  
“grant, and dispose to the *heirs male* of the said John Drum-  
“mond, who would have been entitled to succeed by the inves-  
“titures of the said estate *had it not* been forfeited, *and* to the  
“heirs and assigns of such heir male,” was altered to the follow-  
ing: “ To give grant and dispose to the heir male of the said  
“John Drummond, who would have been entitled to succeed by  
“the investitures of the said estate, had it not been forfeited,  
“and to the heirs and assigns of such *heir male*.”

Although the said Act of the 18th of May, 1784 (24 George III), was the sole authority which could restore the estate legally, and which was in fact the only legal Act for fixing the heirs to whom it must go, it was changed, and thus the destination so clearly expressed by the Act of Parliament, and which was in accordance with the ancient investitures of the estate before it was forfeited, was changed, and these words were changed *without* the sanction of an Act of Parliament, and the destination of the estate altered from: “The *heirs male* of the said John  
“Drummond, who would have been entitled to succeed by the inves-  
“titures of the estate, had it not been forfeited, and to the heirs  
“and assigns of such heir male;” to : “The heir male of the said  
“John Lord Drummond, who would have been entitled to succeed  
“by the investiture of the said estate, had it not been forfeited and  
“to the heirs, and assigns of such *heir male*.”

And thereupon various alterations and erasures were made on the roll of the Act of May 18, 1784, without the sanction

or authority of Parliament. (See the original Act and the Roll, the first at Westminster, the second in Chancery Lane.)

But the C. 57, S. X. of the Act, is in perfect accordance with the intention of the Crown, which was to restore the estates as they were before their forfeiture; this is done with the greatest care in all the other clauses of the same act restoring the other forfeited estates. “And whereas the estates of Perth, which “became forfeited, by the attainder of John Drummond, taking “upon himself the style or title of Lord John Drummond, brother of James Drummond, taking of himself the style or title of “Duke of Perth, stood devised before the forfeiture to *heirs male*; and whereas the said John Drummond, died without “leaving issue lawful of his body, and it is not yet ascertained who “is his nearest collateral *heir male*; be it enacted by the authority foresaid, that it shall and may lawful to his Majesty, heirs “and successors, to give, grant and dispose to the *heirs male* of “the said John Drummond, who would have been entitled to “succeed by the investitures of the said estate, had it not been “forfeited; and to the heirs and assigns of such *heir male*.”

According to the general principle, established by the decisions of the Courts of Scotland, these words form a *fiduciary fee*, and the word “and,” in the words : *and to the heirs and assigns of such heir male*, is always understood, when placed in the above way, to “mean and *whom failing* to the heirs and assigns of such heir “male,” according to Scotch general practice.

From the foregoing explanations it is clear that the Act of Parliament of the 18th May, 1784, the only legal authority for the disposal of the Perth estates, was in perfect harmony with the limitation of the Charter of the 11th of October, 1687, made by the Earl of Perth, Chancellor of Scotland, and 13th of July, 1688, and 28th of August, 1713, and would have accordingly carried the Perth estates to the heirs male of John Drummond, who took of course as a class, so that the destination to the heirs and assigns of such heir male could not take effect until after the failure of *all the heirs male*, as the word “and” clearly means “whom failing,” which is in perfect harmony with the rest of the Act.

The evidence respecting the Charter in question mentioned in Chancellor the Earl of Tweeddale's receipt, which is printed in James Drummond's case for the House of Lords, 1794, when he claimed the Earldom of Perth, and the other Charter he refers to, viz.: "The settlement of the Perth estates, by the Chancellor, Earl of Perth, on the 11th October, 1687, and of the Peerage, on the 17th of December, 1687, were not produced before the House of Lords, in the Duke of Melfort's case, in the evidence given for the restoration of the Perth and Melfort Peerages, as an account of the remainders in favour of the Earl of Melfort, the fourth Earl of Perth's brother german, would have complicated the case, and increased the difficulties of the restoration, as the Perth Peerage would also have been brought under the influence of the Decree of forfeiture of the Parliament of Scotland, pronounced against the Earl of Melfort, 1695, as well as under the influence of the English attainders of 1715 and 1746, (and there was, then, no precedent of the restoration of Scotch Peerages forfeited by the Parliament of Scotland before the Union); but, in the present instance, things are reversed, as we have now only to prove the "remainders," or substitutions to heirs male in the entail of the Perth Estate.

The objections which were set up in 1807 against my late uncle's (Charles Edmond Drummond, Duke of Melforts) claim to the Perth estates and titles, as heir male of the Drummond family, soon after the death of James Drummond, Baron Perth (who obtained the estates when they were restored, and who died in 1800, leaving an only daughter, Clementina Drummond, the late Lady Willoughby de Eresby, who got possession of the Estates upon her father's death, were) :

First. That his blood was corrupted by the attainder pronounced by the Parliament of Scotland against his great-grandfather the Earl of Melfort, in 1695, for being at St.-Germain, with King James II ;

Secondly. That he was an alien, and not only a Roman Catholic, but a bishop, and excluded as a Roman Catholic from the benefit of the Acts of Parliament, 7 of Anne, C. 5 ; 10 of

Anne, C. 5; 4 Geo. II, C. 21; and 13 Geo. III, C. 21, in favour of persons born abroad;

Thirdly. That at the time of his birth, 1752, his father and mother were not legally married, that he was born abroad, was an alien, and a foreigner, who could establish no title in his person to the character he assumed of heir male of John Drummond, brother german of James Drummond, fourth Earl of Perth, Chancellor of Scotland, on which he founded his right to insist on the present process (Court of Session, Edinburgh, March 11, 1807), and he was nonsuited in Scotland by the Court of Session, on the 24th of November, 1807, and his case repudiated, and he was forced by the police to take a passage on board a packet for Lisbon, and leave the country under pretence of the Alien Act.

The answers are :

First. That there was no corruption of blood against him, for his grandfather John Drummond was born in Scotland, on the 26th of May, 1682, 13 years before his great-grandfather, the Earl of Melfort's attainder, in 1695, and it is clearly *settled*, by the law of England, *that an attainder does not reach issue previously born*. Therefore the Duke of Melfort would have been qualified to hold the estate of the family.

Secondly. His father and mother were affianced, in 1747, at Avignon, but could not marry without his father's consent; but his father died in 1754, and in 1755, as soon as the laws of France allowed it, they were legally married, and by the law of France as well as by the law of Scotland, a subsequent marriage would have made him legitimate, even had they not been regularly affianced in 1747. So to all intents and purposes he was capable of inheriting (that was decided by the House of Lords, in 1845).

But none of these objections can be made against the present Earl of Perth and Melfort's claim to the Perth Estates, as his father was born in 1761, six years after his grandfather's marriage; that his own father was married in 1794, and he was born in London, in 1807, and was baptised a member of the

Church of England at Mary-le-Bone Church, in which parish he was born, and he served for nearly twenty years in the British army, which was all proved before the House of Lords upon his restoration in 1853. And it has also been proved that none of the descendants of the body of his great-grandfather John Drummond, Viscount Forth, second Earl et Duke of Melfort, were ever corrupted in blood, so that even previous and without the Act of restoration of 1853, they were all qualified to succeed to the Perth Estates.

It is true that :

It was held in the Perth Peerage claim, in 1853, *that the whole Estate of the Peerage* was in the attainted person, and that therefore the doctrine of Gordon's case was inapplicable, but that proceeded on the assumption that the whole dignity and Estate were in John Drummond, the attainted person. But no evidence had been produced in the House of Lords of the limitations of the Perth Peerage, beyond its creation, in 1605, and the line of succession to heirs male with the estate which it had followed since, as the patent of the 11th of October, 1687, with remainders to the Earl's brother german (the Earl of Melfort), and his heirs male, whom all failing to the heirs male of John, second Earl of Perth, was not produced, as it would have carried the Perth Peerage into the Melfort forfeiture by the Parliament of Scotland, in 1695, and no Peerage forfeited before the Union by the Parliament of Scotland had been restored by the British Parliament; Melfort is the only one.

“It is to be observed that the Decree of Declaration (1) 1785, “(granting the estates to Captain James Drummond as the “nearest collateral heir male), assumes that John Drummond, “the attainted person (in 1746), *was owner of the Estate in fee “simple, or at least under a simple destination; but if the Estate, “was really strictly entailed, this would not prejudice the right of “the collateral substitute heirs, as the Act only purports to deal “with the interest which the Crown had under the forfeiture of 1746.”* (See the settlement and the remainders made by the Chancellor,

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(1) Court of Session, Edinburgh, 8th of March, 1785. See Minutes of evidence. Perth Peerage, page 288.



fourth Earl of Perth, on the 11th of October, 1687, in the late Lord Perth's case, printed in 1794, and the settlements of July 1688, and 28th of August, 1713.)

John Drummond (who was attainted in 1746) "*was never seized in the Estate, so that, if it had been even only a simple fee, his personal right alone could be forfeited, for by the law of Scotland no heir can alter the destination of the former investiture until he is himself infeft in the Estate, and in that situation the attainer could not destroy the right of the heir, which the Act of the attainted person could not destroy.*" For though the law of England is the law of Scotland in matters of treason, it leaves the law of Scotland entire in all other respects, and the rights of parties, excepting in as far as the effect of treason goes, are still to be regulated by the law of Scotland, as is evident from the case of Gordon of Park, 16th of November, 1750, as Sir William Gordon, the person attainted, could only forfeit during his life, because he never was infeft in the estate, which therefore could not be carried by any act of his from the heir of the former investiture. The 7th of Anne, although it introduced the law of treason, as it existed in England, into the law of Scotland, did not alter the law of Scotland in regard to the nature of entailed estates, and the principles by which they were regulated; and accordingly the difference between vested estates in possession or remainder under the law of England, and the substitutions of the Scotch law, was fully admitted in the cases in which the Scots Courts and the House of Lords were called upon to apply the law of forfeiture for high treason to real property in Scotland.

The Perth Estates having therefore been forfeited only during the life of John Drummond (who died in 1747), there was nothing the Crown could convey, in 1784, and therefore no right was acquired by the late Lord Perth by the grant which was made pursuant to the Act 24 Geo. III, C. 57, S. X. Even supposing there had been no settlement made by the Chancellor, on the 11th of October, 1687, with remainders to his brother german (the Earl of Melfort), and his heirs male, whom all failing to the heirs male of John, second Earl of Perth, and no settlements made on 13th of July, 1688, and 28th of August, 1713.

The right to the estate therefore is *now* to be determined, *as if the grant of 1784 conveyed nothing, because there was nothing in the Crown to convey, had never been made, and the Perth Estate is to go to the heir entitled to it under the various settlements, which are all to heirs male.*

With regard to prescription, it has not run against the Earl of Perth and Melfort, present Heir male, and representative of the Drummond family, for the following reasons :

First. The true position of the late Duke of Melfort, who died at Rome in 1840, was only legally established in 1848, when the Evidence in the Perth and Melfort Peerages was proved, and the position of every member of the family was clearly investigated and properly established. And it was only at the death of the late James Drummond, Baron Perth, in 1800, that the late Duke of Melfort *acquired a title to claim the estate and title of Earl of Perth, as heir male of the family*, which he attempted in vain to do in 1806 and 1807, when he was treated as an alien and a foreigner, and as such was forced out of Scotland, very powerful interest having been employed to get him out of the way, and he was at last carried off, and put on board a packet which was sailing for Lisbon by the police, under pretext of the Alien Act.

Secondly. The rule of the law of prescription in Scotland is, “that a person in possession for 40 years upon an unchallenged “title (*except for falsehood*), his title cannot afterwards be called “in question, but the possession must be for 40 years uninterruptedly” (the Perth estates and title were claimed in 1807 by the Duke of Melfort); afterwards at various periods both the Perth Estates and the Perth Peerage were claimed also by a person of the name of Thomas Drummond, of Biddick, who represented himself to be the grandson of James Drummond, Duke of Perth, and who in that case, had he been able to establish his position, would have had a prior right both to the Perth Peerage and Estates to James Drummond of Lundin, created Baron Perth, or the Duke of Melfort, as he brought his case before the Court of Session in 1827, and took various other steps, at dif-



ferent periods, and as late as 1853 he presented a petition to the House of Lords claiming the Perth Estates and Peerage.

Thirdly. With regard to *non valentes*, it is laid down “*prescription cannot operate against any one who is under a legal incapacity to sue. When therefore one is barred from prosecuting his right by forfeiture, against which he is restored ex justiciæ, the years of his incapacity must be deducted from the prescription.*”

But in the present case, the incapacity was only *pretended* in opposition to the Duke of Melfort, as he was really under no legal incapacity to sue, and he was not corrupted in blood, and an alien, as pretended by his opponents. But his position, as well as the position of the present Earl of Perth and Melfort, was only clearly defined in 1848, by the House of Lords.

And even by the Charter of ratification of the restitution of the Estates in 1719, from the Crown, dated 12th February of 1731, Lord John Drummond, having in him only a personal title to the estate, nothing could be forfeited in him but the right, *such as it was in him*, namely, during his life remaining in *heridate jacente* of James Lord Drummond, the right to the estate passed to the heirs male upon the death of Lord John Drummond, and the heir male is now the Earl of Perth and Melfort.

The late James Drummond of Lundin, Baron Perth, having obtained under the 24th Geo. III, C. 57, S. X., the presentation of the Perth estate, a short time before his death, in 1800, he assumed it to have been granted in fee simple, although he had so clearly stated the reverse in 1794, when he had a son and was claiming the old Perth and Drummond Peerages, and wished to prove “that for centuries the estates and title had been strictly entailed, as strictly as it was possible to conceive entailed, to go to the heirs male of the Drummond family.” (1)

He then endeavoured to make a deed of appointment of the said estate, in favour of his only daughter, but this deed is null and void, from not having been executed according to

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(1) See his Printed case, House of Lords, 1794.



*the law of death-bed in Scotland*, which requires such a deed to be signed 60 *days* previous to death (the deed was signed on the 30th of May, 1800, and Baron Perth died on the 2d of July, 1800). And besides it was only witnessed by two of his servants, instead of by *three creditable witnesses*, as required by the law of Scotland for such deeds: *and erroneous because the Crown, as stated before had in fact nothing to grant by the Act of 1784.* James Drummond, Baron Perth, was only invested in his right as heir male of the investitures, and therefore entered in 1784 into his natural right, as the heir male of the charters.

The Crown could acquire no right by prescription during the time the estate was unlawfully retained (from 1747 to 1784) by the Crown, under pretence of the attainder of Lord John Drummond in 1746, “*unless he had first changed, after investment, the existing investitures to heirs male;*” and besides by the statute, 1617, C. 12, there is no “*prescription in favour of the Crown,*” this statute not applying to the possession of the Crown, but relating “*only to subjects, his Majesty’s lieges, being the persons mentioned in the said statutes, the only one regarding the law of prescription in Scotland.*”

Neither could negative prescription be pleaded by a person in whom a right is *not* established by the positive prescription.

Neither would this last prescription apply now, because the Earl of Perth and Melfort was *contra non valentes agere*, as long as a nearer heir male of entail was alive, and the late Duke of Melfort, his uncle, only died in 1840.

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# MELFORT ESTATES AND PEERAGES

## AND LUSSAN ESTATES IN FRANCE.



The Honourable John Drummond, second son of James, third Earl of Perth, by Lady Ann Gordon (1), daughter of George, second Marquis of Huntley, was born in 1649. Both his grandfather, the second Earl of Perth (who was a faithful companion of Montrose), and his father, Lord Drummond, while yet a youth, suffered great persecution, heavy fines, and imprisonments from Cromwell, on account of their constant devotion to their Sovereigns, and both were at last obliged to emigrate to France, but at the first moment of a contemplated possibility of a restoration, his father, then the third Earl of Perth, was one of the first to re-establish and enforce the royal authority in the Highlands of Scotland. John Drummond entered the army, and in 1673 was appointed by King Charles II captain of the Foot-Guards of Scotland; in 1679, lieutenant-governor of Edinburgh Castle; in 1680, lieutenant-general and master of the Ordnance; in 1682, treasurer and comptroller of Scotland, and in 1684 promoted to the office of secretary of State for Scotland, and in 1685, on the accession of King James, he was raised to the peerage of Scotland as Viscount Melfort, « as a

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(1) She was a Roman Catholic, and both her sons, the Earl of Perth, and John Drummond, afterwards the Earl of Melfort, were brought up by her, and abroad, their position was exactly the same, as King Charles II and King James's, a Protestant father and Catholic mother, and brought up abroad in Catholic countries. Besides, after the Reformation, many of the Drummonds remained Roman Catholics. — Lord Balmerino was tried for high treason in 1603, for having in his capacity of secretary of State obtained the signature of his Royal master, James VI to a letter addressed to Pope Clement VIII, soliciting a cardinal's hat for his kinsman Drummond, Bishop of Vaison, in France.

“just reward (records the patent), for his good and faithful services to the country and to the late King Charles II.” Upon which he also received from the Crown a grant by royal charter, under the Great Seal, of the Baronies of Melfort, Muirhall and other lands in Argyllshire, but for State reasons the Viscount made an exchange with the Crown of these lands in Argyllshire (by Act of Parliament, 8th of June, 1686), for the baronies of Riccartoun, Cessnock, Galstoun, Haymyross, Castlemayn, and Cummock, situated in Ayrshire, when he was advanced to the dignity of Earl of Melfort, “as a reward for his “good and faithful services to King Charles II, to the country, “and to King James” (records the patent), and in the public Act of Parliament his services are again recorded thus : “That “these estates were detached from the Crown as a just recompense and reward of the good and faithful services done and “performed by him to the Crown and Kingdom.”

On the 9th of November, 1688, the Earl of Melfort surrendered to the Crown all the baronies in Ayrshire, granted to him by Act of Parliament in 1686, and by a Royal Charter, under the Great Seal, which was duly registered on the 28th of the said November, 1688, the King granted all the said baronies and lands in Ayrshire, then erected into the Earldom of Melfort, to Euphemia Wallace, Countess of Melfort, his wife, for life, with a limitation on her decease to their eldest lawful son John Drummond Viscount Forth and to the heirs male of his body.

In 1689, the Earl of Melfort retired with King James to France, and was soon after followed by the Countess and their son John, Viscount Forth, then an infant seven years of age. After Lord Melfort left Scotland, his residence in Edinburgh was pillaged, all his charters, papers, and property scattered, to the mob (1), and all his own estates in Scotland, consisting of the baronies of Monkland, Duchal, and many lands situated in the sheriffdoms of Lanark and Renfrew, and county of Edinburgh, and also many lands on the Forth, and houses in the city

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(1) Some of these charters and papers were saved from the hands of the rabble by George Drummond of Blair Drummond, whose grandson, James Drummond, of Blair Drummond, restored them to the fourth (Earl) Duc de Melfort, in 1788.

of Edinburgh, as well as all his personal property, were seized by the Crown officers, sequestered and disposed of, even before the decree of forfeiture of 1695 had been passed against him “for being seen at St. Germain’s.”

At the time of the Revolution, the title of Euphemia, Countess of Melfort and John Drummond, Viscount Forth, to the estates granted by the Royal Charter was a full and complete legal title deriving its origin from an exchange, made for State reasons, under the provisions of, and sanctioned by, a public Act of the Parliament of Scotland. But on the 4th of July, 1690, the Parliament of Scotland rescinded all the forfeitures for treason from 1665 to 1690, and all grants of lands made by the Crown, of lands forfeited from 1665 to 1690, and under that pretext these lands were seized, and Euphemia Wallace, Countess of Melfort, and her son John Drummond, were deprived of these lands, which were given in exchange to the Earl of Melfort, and secured to them by a public Act of the Parliament of Scotland. Without forfeiture, and without the Act of Parliament of June 8, 1686, being repealed, and without any cause or crime being even alleged against them, and although the decree of forfeiture of 1695, by the Parliament of Scotland against the Earl of Melfort (1), did not in any manner affect the

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(1) Of the Earl of Melfort, while in Ireland with King James, Macaulay says, page 182, vol. III, “Melfort was in a singularly unfortunate position; he “was a renegade, he was a mortal enemy to the liberties of his country (*a*); “he was of a bad tyrannical nature, and yet he was in some sense a patriot. “In consequence, he was more universally detested than any man of his time, “for while his apostasy and his arbitrary maxims of government made him “the abhorrence of England and Scotland, *his anxiety for the dignity and “integrity of the Empire* made him the abhorrence of the Irish and the “French.” And he states what the Marquis of Avaux, the French Ambassador, who was also with King James in Ireland, says of Melfort, in his dispatch to the King of France, of April 6, 1689 (Macaulay, page 133, vol. III): “The discussions of the Council were long and warm. Tyrconnel, who had “just been created a Duke, advised his master to stay in Dublin; Melfort exhorted his Majesty to set out for Ulster; Avaux exerted all his influence in “support of Tyrconnel; but James, whose personal inclinations were naturally on the British side of the question, determined to follow the advice of “Melfort. Avaux was deeply mortified, and in his *official letters* he expressed, with great acrimony, his contempt for the King’s character and “understanding; for Tyrconnel, who had said that he despaired of the fortunes of James, and the real question was between the King of France and



rights of his wife, the Countess of Melfort, or of their son John Drummond, then 13 years of age; afterwards as Roman Catholics (by the act of 1700, chap. 3), they were made incapable of asserting their rights of succession to the said lands and baronies, and were compelled to remain resident in France.

In 1854, after the restoration of the Duke of Melfort to the Earldoms of Perth and Melfort, and the House of Lords and Government had carefully examined, and gone into all the particulars and the hardships of the case, Lord Aberdeen, then Prime Minister of England, was desirous of creating an hereditary charge on the hereditary revenues of Scotland, in his favour, and in favour of his heirs male succeeding to the Earldom of Melfort, as compensation for the property lost in 1689 in Ayrshire, Lankarshire, Renfrew, on the Forth, and in the city of Edinburgh, and he consulted with the Lord Advocate to ascertain the practical way of proceeding in that peculiar and singular case (1),

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“ the Prince of Orange, the ambassador pronounced what was meant to be a  
“ warm eulogy (of Tyrconnel); but perhaps may be more properly called an  
“ invective : ‘ If he were a Frenchman, he could not be more jealous for the  
“ interests of France.’ The conduct of Melfort on the other hand was subject  
“ to an invective, which much resembles an eulogy : ‘ He Melfort is neither  
“ a good Irishman nor a good Frenchman, all his affections are set on his  
“ own country.”

(a) “(Enemy of revolution, not of liberty). — (His father and grandfather had  
“ suffered much from Cromwell’s persecutions, and the Drummond family was  
“ nearly related to the Royal House of Stuart, besides their many ties of  
“ gratitude; Ada, wife of Malcolm Beg Drummond, seventh Thane of  
“ Lennox, was only daughter and heiress of the Earl of Lennox (her only  
“ brother, died S.P.), and was niece of John, the Steward of Scotland, and  
“ first cousin of Walter Stuart, who married Margery Bruce, daughter of Robert  
“ Bruce, through whom the Stuarts succeeded to the Crown of Scotland;  
“ and Queen Mary was sixth in lineal descent from Queen Annabella Drummond,  
“ wife of Robert the Third, and mother to James the First, and  
“ her husband Darnley was great-grandson of John Lord Drummond, who was  
“ consequently great great-grandfather of King James the First of England).”

(1)

Downing-Street, July, 1854.

MY DEAR LORD,

I will see the Lord Advocate, and will ascertain from him what opinion he has formed respecting the documents which I placed in his hands, but I feel bound to state that I do not anticipate the possibility of my being able to make any proposition to the House of Lords upon the subject: such proceeding indeed would be quite unprecedented, and I apprehend that the House of Lords have

and it was then ascertained that as H. M. King George IV. had resigned all the hereditary revenue of Scotland, to obtain an increase of his civil list, it was settled by Parliament that all the then existing charges upon the hereditary revenues of Scotland should continue to be paid in Scotland, and that the remaining balance of those revenues, should be transferred to the Consolidated Fund, which makes it impossible for the Government to create any new charge or grant any hereditary pensions on that fund without an Act of Parliament (1).

The Lord Advocate, who had carefully examined all the points and particulars of this claim for compensation out of the public money, for the loss of the Regality and Earldom of Melfort, in Ayrshire, stated that the only bar to a *legal right* to that compensation was the act recissory of 1690, as certainly Euphemia, Countess of Melfort, and her son John Drummond, were not attainted or in any way affected by the decree of forfeiture pronounced against the Earl of Melfort in 1695, beyond the loss of the Peerage and the Earles own property; that consequently

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no power to take any cognisance of the matter. I should imagine that nothing but an Act of Parliament would be sufficient to afford a remedy.

I shall be glad to hear the report of the Lord Advocate, and to consider how far it may be practicable to take any further step.

I am, my dear Lord, very truly yours,

ABERDEEN.

The Earl of Perth and Melfort.

(1)

Argyll-House, August 8th, 1854.

MY DEAR LORD,

I have conversed with the Lord Advocate on the subject of your claims, but he has made no report, and is still in possession of the papers which I referred to his consideration. I believe that he finds it very difficult to make any practical suggestion, which could lead to a favourable result.

My impression is, that, as the hereditary revenues of the Crown have been transferred to the Consolidated Fund, no other source could be available except under the sanction of an Act of Parliament. I have already informed you, and I am sorry that I must repeat my regret, that it is not at present in my power to undertake the responsibility of introducing a measure for the purpose (a).

I am, my dear Lord, very truly yours,

ABERDEEN.

The Earl of Perth and Melfort.

(a) The Earl of Aberdeen retired from office in February, 1855, and in August, 1854, the Session was nearly over.



for any part of the Melfort property in Ayrshire granted by the Royal Charter, which could be proved *not* to have been property forfeited from 1665 to 1690, the claim was good and legal.

Thereupon the Earl of Perth and Melfort desired a diligent search to be made in Scotland, to ascertain the origin of the possession by the Crown of all these lands, and he was informed : “ That *none* of the records or documents regarding the forfeitures of lands from 1665 to 1690 were in existence, and that “ even those regarding the forfeitures of 1715 had been put “ away, and could not be even traced at present, and that consequently the attempt to make a general search in Scotland “ would require much time, lead to enormous expense, and “ would be most probably unsuccessful ” (1).

As stated before, the Earl of Melfort followed King James to St. Germain, and in 1692 was created by him Duke of Melfort, in Scotland, which title was accepted and confirmed by Louis XIV, on the death of King James, when the King of France granted to the said John, Duke of Melfort, and his male posterity, the “ honneurs du Louvre, ” and the “ Tabouret to the Duchesses, ” and all the other “ honneurs et privilèges ” enjoyed by French Dukes and Duchesses, excepting that, as Dukes of Melfort, they were not admitted into the Chamber of Peers of France. At that period only about *one third* of the French Dukes were members of the Chamber of Peers, the others were not, but Dukes only were eligible to the French peerage. The Earl of Melfort, thereupon, assumed the title of “ Duc de Melfort, ” and all his younger sons the title of Counts, according to French custom ; and made “ les preuves de 1400 ” necessary for French noblemen to enjoy the “ honneurs de la Cour, ” and enter the King’s carriages ; and he and his eldest male descendants were ranked as French Dukes, foreign

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(1)

Edinburgh, 16, How-street, February 2, 1854.

MY LORD,

On inquiry at the Exchequer, the reply was, they have no records of the forfeitures *prior* to 1715, and even the papers with regard to them have long since been laid aside.

ROBERT RUTHERFORD.

Reply from Robert Rutherford, Esq. W. S.

Princes, “and exiled Scotch Peers” (1), and as such they could not compatibly have been also French peers, but they could enjoy all other honours and privileges belonging to their French ducal rank, honours and privileges, which British Dukes and Duchesses were not entitled to, and did not enjoy at the Court of France (2). The titles of the Dukes of Berwick, Albemarle, and Perth were confirmed also by Louis XIV, and were granted the same honours and privileges in France, privileges and honours enjoyed by their descendants up to the French Revolution (1791). Louis XIV also confirmed, in 1704, and Louis XV, in 1741, certain ancient privileges which had been granted at various times by the Kings of France to the Scotch resident in France, in favour of all the followers of the Stuarts, which gave them the enjoyment of many of the rights of French subjects, without being naturalised. In France, they remained privileged foreigners, with power to practice their religion, to make their marriage settlements, wills, etc., either according to the laws and customs of France or of their own country (3).

(1) Old family charters.

(2) St. Simon, vol. 4, p. 350, et vol. 2, p. 119.

(3) Par ordonnance du 13 Septembre, 1513, Louis XII ordonna : “ Que, considérant les grands services rendus à la France par l’Écosse . . . Il exemptait à l’avenir les Écossais résidant en France de l’obligation où ils étaient de demander particulièrement des lettres de naturalisation . ”

And the Scotch Act of Parliament of 1558, C. 65, declares :

“ That all subjects who shall be naturalized in Scotland, as subjects of Scotland, were declared to have naturalisation in France.” According to a letter declaring the privileges and liberties of Scotchmen in the Kingdom of France, Denisart explains clearly that :

“ The English and other followers of King James, in France, enjoy in certain respects the privileges of the regnicoles, without being naturalised. They form in this kingdom a body of people, who, always attached to the House of Stuart, preserve their religion, celebrate their marriages and regulate the conditions of them according to their own usages ; they inherit property from each other, divide and dispose of it conformably to the laws of their own country.— There is on that subject a letter from Louis XIV to Mr. le Camus, lieutenant civil, dated 1st of March, 1704, and an other from Louis XV, to the Chapter de St. Pierre de Lille, dated 25th of March, 1741.—Vide also the capitulation of Limerick.”

This is all well explained by Denisart, one of the most exact compilers of the time, in his collection of jurisprudence (See Merlin, at the word *Anglais*) : “ The fact is that the companions in exile of the unfortunate James II, and

Such was the permanent position of the Drummond of Perth and Melfort family in France during more than a century: but they never were naturalised, and as exiled Thanes and Scotch Peers always retained “l'esprit de retour,” which they invariably and most positively always declared in every circumstance and at every period during the century and a half of their exile or forfeiture. In 1715, Lord Drummond left France to join James III's army in Scotland. And the second Earl and Duc de Melfort, who had only a few years before married the Countess and heiress of Lussan, in Languedoc, left his wife and young children to join that expedition as Major-General. In 1745, the third Earl and Duc de Melfort having already lost his feet in the German wars, was unable to join Prince Charles Edward, but he gave a large sum of money to that prince to assist in the expedition, and his brother Lewis Drummond (1), Comte de Melfort, was second in command of the ‘Régiment Royal Écossais,’ a regiment which was raised at the expense of the family, and which was then commanded by Lord John Drummond, whose brother James, third Duke of Perth, commanded a wing of Charles Edward's army, and out of their reduced means the Perth and

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“ their descendants, did not come to France, to fix their abode there, without intention of returning to their native country. This hospitable land, was for them but a place of temporary residence; England was still their country, thither were directed their hopes and wishes. By putting off their English character, to assume a French one, they would have abdicated their hopes and their prospects. It would be unreasonable to impute any such intention to them. On the other hand the government, which received them with kindness and interest, was far from requiring from them the sacrifice of their nationality. It sympathised with their desires, and if it extended to them rights generally confined to French subjects only, it was a consolation to them under their misfortunes, an alleviation of the period of exile and trial, and a motive to wait with resignation better times. Their position was, therefore, a distinct and peculiar one: they did not cease to be foreigners, but they were privileged foreigners, who were in many respects treated on an equal footing with the native subjects of the kingdom”. (Voir Dupin, Merlin, etc., 1834.)

(1) Letter from Lewis Drummond, Comte de Melfort, to the Duchesse de Melfort:

10 Août 1792.

“ Il est important que, mon sort étant décidé, je tâche, ma chère duchesse, d'améliorer celui de nos enfants..... Et par conséquent, suis autorisé à représenter..... Il est juste de me traiter comme les *Colonels étrangers*, mes confrères, qui n'ont ni mieux ni aussi longtemps servi.”

Melfort family procured and presented Prince Charles Edward with £52,000 towards the expedition. In 1782, James Lewis Drummond, fourth Earl and Duc de Melfort, went over to England and claimed the restoration of his Peerage and Estate (see Lord Adam Gordon's letter, June 6th, 1782), and did so again in 1788; he died in Spain in 1800. In 1802, his brother, Charles Edward Drummond, fifth Earl and Duc de Melfort, was in England for the same purpose, and then went to Scotland, and his nephew and heir male, the present Earl of Perth and Melfort, who was born in London, in 1807, and baptised a member of the Church of England, at Mary-le-Bone Church, served for many years in the British army as Captain Drummond, while under the legal disabilities caused by the attainders of the family in 1695, 1715, 1745, which disabilities were only removed in 1853, by her most gracious Majesty and Parliament, when he was restored to the ancient Peerages of his family and to the ancient position of his ancestors in Scotland, but only after exertions and sacrifices of more than a quarter of a century, which of course greatly involved him, as he has so far recovered none of the family property or received any compensation whatever from the British Government for all the property lost by his family in Scotland and in France.

The Hon. John Drummond, first Earl and Duc de Melfort, had, by his first wife Sophia, heiress of Lundin, several sons of the name of Drummond of Lundin; she died in 1679, and was succeeded in her estates by her eldest son, Robert Drummond of Lundin who was father of James Drummond of Lundin, who upon the death of Edward (ninth Earl), and sixth Duke of Perth, without issue in 1760, became chief male of the House of Drummond, and was served heir male to the last Earl of Perth in Edinburgh in 1766, and he thereupon assumed the title of Earl of Perth; he married Lady Rachell Bruce, and was father of James Drummond, who upon the Act of general Restoration of the forfeited Estates in Scotland, by the Crown and Parliament in 1784 (1), obtained the Perth Estates as nearest heir male

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(1) Anno vicesimo quarto (18th of May, 1784), Georgii III Regis, Cap. 57, S. X.

An Act to enable his Majesty to grant to the heirs of the former proprietors, upon certain terms and conditions, the forfeited estates in Scotland, which

of James, third Duke of Perth and of Lord John Drummond, in whom the Perth estates became forfeited in 1746, he was created an English Peer as Baron Perth in 1797, and died in July, 1800, leaving an only daughter, the Hon. Sarah Clementin Drummond, the late Lady Willoughby de Eresby, who there upon took possession of the estates. And the male representation of the Earldom of Perth, reverted to his second cousin, James Lewis Drummond, fourth Earl and Duc de Melfort, who died in Spain S. P., in September, 1800, when his next brother Charles Edward Drummond, fifth Earl and Duc de Melfort, became chief of the House of Drummond. He died in 1840, and was succeeded by his nephew and heir male, George Drummond,

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were put under the management of a board of trustees by an Act passed in the twenty-fifth year of the reign of his late Majesty King George the Second; and the repeal of the said Act:

S. X. "And whereas the Estates of Perth, which became forfeited by the attainer of John Drummond, taking upon himself the style or title of Lord John Drummond, brother to James Drummond, taking on himself the style or title of Duke of Perth, *stood devised before the forfeiture to heirs male*: And whereas, the said John Drummond died without leaving issue lawful of his body, and it is not yet ascertained who is his collateral heir male; be it enacted by the authority aforesaid, that it shall and may be lawful to his Majesty his heirs and successors, to give grant and dispose to the *heirs male* of the said John Drummond, who would have been entitled to succeed by the investiture of the Estate, *had it not been forfeited, and to the heirs and assigns of such heir male.*"

Translation of a letter from James Lewis Drummond, fourth Earl and Duc de Melfort, to his cousin Captain James Drummond, who was created Baron Perth, in 1797. At the time, the Act of restoration of the Perth Estates was examined.

"Paris, October 23, 1786.

"I have been informed, my dear cousin, of the noble and truly just answer you made to those of my name, who are settled in England, and who under I do not know what pretext of religion, wanted to persuade you to re-entail your Estates upon the different branches settled in England, and deprive me thereby of my natural and indisputable rights. I thank you with the more pleasure for this proceeding as you have already a daughter, and I hope, my dear cousin will soon give you a son, which will cause the unjust pretensions and deep speculations to vanish of those who aspire so soon to succeed to you.

"I form the most sincere wishes for your preservation and for your happiness. I have long wished, and been in search of the means of seeing you, and to tighten by friendship the ties of blood which unite us. My military occupations, and I have many, have prevented my going to England, and my delicacy, at the moment you have been restored all the Estates of the



the present Earl of Perth and Melfort in Scotland, and Duc de Melfort in France.

John Drummond, first Earl and Duc de Melfort died in 1714 (1) and was succeeded in the Melfort honours by his eldest son by his second marriage (according to the limitations of the patents) with Euphemia Wallace. John Drummond who was born in Scotland on May 26, 1682, and who became second Earl Duc de Melfort, and although not included in the Act of Forfeiture pronounced by the Parliament of Scotland against his father the Earl of Melfort, his succession to that Peerage was barred, although his blood was "*not*" tainted by the attainder (this was decided by the Privy Council in 1834). He married in 1707 Marie Gabrielle d'Audibert, Comtesse and Heiress of Lus-

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" family, prevented my writing to you. I should have feared that step under  
" such circumstances would have appeared to you guided by interested  
" motives, and I hope I may never know so vile a feeling.

" I have the honor to be with an attachment as worn as inviolable,

" My dear Cousin,

" Your very humble and very obedient servant,

" LE DUC DE Melfort. "

It having been represented to Captain James Drummond, afterwards Baron Perth, by various members of the Drummond family, that the grant of the Perth Estates made to him, was not conform to the intentions clearly expressed in the Act of Parliament, to restore the Estates to the heirs male who would have been entitled to succeed, by the investitures of the said Estates, had they not been forfeited, Captain James Drummond gave his solemn word of honour to Messrs. Drummond, of Charing Cross, that he would faithfully see that the Perth and Drummond family Estates should be properly entailed upon the heirs male of the Drummond family, according to the old investitures and the intentions of Parliament.

(1) Soon after his death the following letter was written to the Duchess of Melfort by James III :

Rome, February 3, 1714.

" The true sense I have of the late Duke of Melfort's long and faithful ser-  
» vices make me sincerely share in the loss both you and I have made of  
» him : It is a sensible mortification to me not to be able to be of that comfort  
» and support to you, your son, and whole afflicted family, which you so justly  
» deserve from me; all I could do was to recommend you all to the Queen's  
» goodness and bounty, which I did even before D. Melfort's death, whose merit  
» is too great ever to be forgot by me, who desire nothing more than to have it  
» in my power of shewing you and your family how sincerely sensible I am of  
» it and of the particular esteem and kindness I have for yourself.

" JAMES R. "

For the Duchess of Melfort.

san, and Baronne de Valrose, etc., in Languedoc, whose father the Comte de Lussan was a Cordon Bleu, and nearly related to the families of Budos, de Portes, de Montmorency, de Condé, de Conti, and Lafare. The Countess de Lussan brought her husband, the Duc de Melfort, the various estates of her family (14 villages) in Bas-Languedoc in France, which she inherited from her father, and which had been erected into a Comté (male et femelle tenant de la Tour des Louvres) by Louis XIV in October, 1645; and the eldest son of the said second Earl Duc de Melfort and of his wife Marie Gabrielle, Comtesse de Lussan, James Drummond, succeeded his father as third Earl Duc de Melfort, and his mother as Comte de Lussan and Baron de Valrose, and took the above mentioned large estates in Languedoc as her heir; he enjoyed those estates until his death in 1766, and was succeeded then by his eldest son James Lewis Drummond fourth Earl Duc de Melfort and Comte de Lussan (1), (who married in 1788,

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(1) Contrat of Marriage of James Lewis, Duke of Melfort, and Mademoiselle Aglaé Elisabeth Jaqueline d'Oms Alais. — Paris, 30th of April, 1788.

Par-devant les conseillers du Roy, notaires au Châtelet de Paris, soussignés, furent présents très-haut et très-puissant Seigneur Milord Jacques-Louis Drummond, Duc de Melfort, Marquis de Forth, Baron de Clainvault, Comte de Melfort, de Lussan et autres lieux, Pair d'Angleterre, d'Écosse et d'Irlande (a), Maréchal des camps et armées du Roy, Chevalier de l'Ordre royal et militaire de Saint-Louis, demeurant à Paris, rue de l'Université, paroisse Saint-Sulpice, fils aîné de défunt très-haut et très-puissant Seigneur Milord Jacques Drummond, Duc de Melfort, Marquis de Forth, Baron de Clainvault, Comte de Melfort et de Lussan, Pair d'Angleterre, d'Écosse et d'Irlande, et de très-haute et très-puissante Dame Madame Marie de Bérenger, actuellement sa veuve, contractant en son nom de l'agrément de Mad<sup>e</sup> Dame, sa mère, représentée par très-haut et très-puissant Seigneur Milord Louis Drummond de Melfort, Lieutenant-général des armées du Roy, et Grand-Croix de l'Ordre royal et militaire de Saint-Louis.

Lesquels, dans la vue de mariage accordé entre ledit Seigneur Duc de Melfort, et mad<sup>e</sup> Demoiselle d'Oms Alais, dont célébration sera faite incessamment, ont arrêté entre eux les conditions qui suivent :

De l'agrément de Sa Majesté Louis XVI, Roi de France ;

De la Reine ;

De Monsieur, frère du Roy (Louis XVIII) ;

De Madame ;

De Monseigneur le Comte d'Artois, frère du Roy (Charles X) ;

(a) The English and Irish Peerages were given in Ireland, in 1689, too late to be acknowledged in England by Parliament.



haute et puissante demoiselle Aglaé d'Oms Alais, only daughter and heiress of haut et puissant Seigneur Marc d'Oms Alais, Vicomte d'Alais, Baron de Salindre, etc. ; the marriage took place with the consent and in the presence of H. M. Louis XVI, Marie Antoinette (the Queen), Louis Stanislas Xavier (Louis XVIII), Charles Philippe (Charles X), all three Kings of France,— and Mesdames (the sister and aunts of their Majesties) ; — and these estates continued in such possession until 1792, when the château de Lussan was seized by the revolutionary Government, all his property pillaged and all the charters, family papers, furniture, etc., burnt by the mob, and soon after the estates

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De Madame Élisabeth, sœur du Roi ;

De Madame Adélaïde, et de Madame Victoire, tantes du Roy ;

Et en présence aussi de M. le Comte de Mailly, Marquis d'Haucourt, Maréchal de France, Chevalier des Ordres du Roy, ami ;

De Monseigneur l'Évêque de Sisteron, ami ;

De Messieurs le Marquis et Comte de Baschy, cousin de ladite Demoiselle d'Oms ;

De Monseigneur l'Archevêque de Damas, coadjuteur d'Alby, cousin des deux ;

De Monseigneur l'Évêque de Bayonne, cousin de ladite Demoiselle d'Oms ;

De Monsieur le Marquis de Puy-Montbrun, Brigadier des armées du Roy, Grand-Croix honoraire de l'Ordre de Malte, et de Madame la Marquise de Puy-Montbrun ;

De Monsieur le Comte d'Oms, Officier au régiment des Gardes-Françaises, cousin ;

De M. le Comte de Baschy, Colonel commandant le régiment de Barrois ;

De Monsieur le Comte de Monteynard, Maréchal des camps et armées du Roy, lieutenant général de la province de Bourgogne, cousin ;

De Monsieur le Vicomte de Borne d'Altier, cousin des deux ;

De Monsieur le Comte de Villevieille, cousin de ladite Demoiselle d'Oms ;

De Monsieur le Comte de Villeveau, Lieutenant au régiment des Gardes-Françaises, cousin à cause de Madame de Villeveau, son épouse ;

De Madame la Comtesse de Cambis, cousine de la Demoiselle d'Oms ;

De M. le Comte Maurice Drummond de Melfort, Capitaine de remplacement au régiment de Basigny, frère dudit Seigneur futur époux ;

De Monsieur le Marquis de Monteynard, Lieutenant général des armées du Roy, Gouverneur lieutenant général du Royaume de Corse ;

De Monsieur le Comte de Marguery, Major en second au régiment de la Reine ;

De Madame la Comtesse de Saint-André, de Madame de Saint-André, amies ;

De M. de Verdun, cousin de la Demoiselle d'Oms ;

De Monsieur le Bailly de Suffren, ami ;

De Monsieur le Chevalier de Montvert, commandant les volontaires de Bourbon, ami.

divided and sold to 47 different persons. James Lewis Drummond fourth Earl Duc de Melfort was a French General, but had retired from the French service in 1790, and emigrated to Spain, and entered the Spanish service as a Brigadier. He died S. P., in September, 1800, without returning to France. All the other members of the Melfort family also soon after retired from the French service (1).

The different members of the Melfort family who had not been able to emigrate were imprisoned, during the reign of Terror persecuted, and their property, papers, etc., at the château de St. Germain (in which their ancestor the first Earl Duc de Melfort had been granted an apartment by Louis XIV, and of which his descendants had obtained an hereditary grant from Louis XV, and which had in fact been a home for the family for a century of exile), was pillaged, everything was destroyed or confiscated, as well as large sums of money placed in the hands of M. Pinet, the Court banker.

Charles Edward Drummond, afterwards fifth Earl Duc de

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(1) For centuries many of the Drummonds had been allies of France or served in France. Sir Malcolm Drummond, twelfth Thane of Lennox, was one of the allies of Charles VI of France, 1385. See Rymer, vol. VII, p. 485.

Sir John Drummond, of Inner Peffrey, third son of the second Lord Drummond, commanded the Scotch Guards of King Henry II of France, 1548, and Henry Drummond of Riccartoun was killed in the French service in 1560. The Regiment of "Royal Ecossais," in the French service, was raised during the reign of Louis XV at the expense of the Drummond family, five members of which family became generals in the French service and Cordon Rouge during the last century, but however it is notorious that the same, as with regard to the officers, of the Irish Brigade, the Scotch in the French service, were never considered as French subjects, but as faithful old allies and persons of a distinct nation enjoying particular privileges in France. Even in 1770, when the widow of the third Earl Duc de Melfort was granted a pension by Louis XV, the following is a copy of the letter of the Duc de Choiseul, announcing it to her :

« A Compiègne, le 4 août 1770.

» J'ai proposé au roi, Madame, de vous accorder une gratification annuelle  
» de 2,000 fr. sur les fonds des Écossais. Sa Majesté a bien voulu y consentir.  
» J'ai l'honneur de vous adresser un mandement de cette somme, qui sera payé  
» à la fin du mois prochain par M. Magon, banquier de la Cour, place Vendôme.  
» Je suis bien aise d'avoir trouvé l'occasion de faire quelque chose qui vous  
» soit agréable, et de vous donner des preuves du respect avec lequel je suis,  
» Madame, votre très-humble et très-obéissant serviteur,

» Duc de CHOISEUL. »

. A Madame la Duchesse de Melfort, à Saint-Germain-en-Laye.

Melfort, who was a Roman Catholic prelate, as well as his younger brother, Léon Maurice Drummond, Comte de Melfort, (the father of the Earl of Perth Melfort), after suffering many years of imprisonment and persecution from the French revolutionary Government, succeeded in escaping from France, first to Holland and from thence to England, where some years after in 1805, their true position being understood by the British Government, they were granted considerable pensions (not as French emigrants), but as British subjects, upon the Civil List of Scotland. These pensions all died away. And in 1831, a pension of £100 was granted to Captain George Drummond, now Earl of Perth Melfort, which pension, when the pension List was revised by the House of Commons in 1834 was removed from the Bounty List, and placed upon the list of pensions given in compensation for forfeited estates, *and this is the only compensation the Earl of Perth Melfort has obtained for all the property lost by his family in Scotland and in France.*

The Duc de Melfort, now Earl of Perth and Melfort, to whom Her Majesty was most graciously pleased to restore those ancient family Peerages as male representative of the Drummond family, was born in London in 1807 and baptised a member of the Church of England, at Mary-le-Bone Church, in London, in which religion he was brought up; his first wife the Baroness de Rotberg (widow of the celebrated Gen. Comte Rapp, peer of France) was also a Protestant, and his present wife—Miss Birmingham Sewell of Athenry (widow of Col. Burrowes of Dangan) and granddaughter of the Hon. William Beresford, Lord Decies, late Archbishop of Tuam, brother of the first Marquis of Waterford, is also a Protestant. The Earl of Perth and Melfort was educated for the army. He entered the 93rd R. of Highlanders in 1824 as an ensign, and with that regiment served for a considerable time in the West Indies, and was wrecked with detachments of Highlanders in the Shiply transport on the Island of Barbadoes in 1826, on his way out to Antigua; every thing was lost with the ship, and the lives of the Highlanders saved with great difficulty. In 1840, having succeeded to the French family honours by the death of his uncle and become Duc de Melfort and Comte de Lussan in France, he was soon

after reluctantly obliged to retire from the army, as the Horse Guards refused to insert his name as « Duc de Melfort » in the army list. At that period it was understood that British officers were not allowed to bear foreign titles ; but in 1848, her Majesty the Queen, to whom the Duke of Melfort, soon after his second marriage, humbly submitted his case, was graciously pleased to examine it and to command “ that as the Duke and “Duchess of Melfort were British subjects, they were to be presented and invited at Court as Duke and Duchess de Melfort,” which was accordingly done immediatly H. M.’s pleasure was known, and the Duke de Melfort was presented by the late Lord Willoughby de Eresby, and the Duchess de Melfort was presented by the Duchess of Atholl. Consequently, his name “ as Duke de Melfort ” might have been put down in the army list, and he enabled to continue his military career,—which he was obliged to abandon at 33 years of age for the above reason. And had he not assumed the French titles of his family at that period and established his rights to them before the Conseil d’État of France and the Tribunal de la Seine (not yet having been able to prove his pedigree or establish his claim to the Scotch Peerages before the House of Lords), the legitimacy of his branch of the family would have been doubted, both in France and in Scotland ; had he not at once assumed the titles his ancestors had borne in France for a century and a half, as various ill-natured and unfounded reports had been spread, that there were several marriages of the family, which could not be proved, and his position in both countries would have been entirely destroyed in consequence. These reports had originated in some measure in the destruction of many charters, public registers and family papers both in Edinburgh at the Revolution of 1689, and at Lussan and St. Germain, during the French Revolution, 1792 and 1793.

In 1819, the Drummond family sent in a claim to the British Commission for compensation, as British subjects out of the fund, paid over by the French Government to the British Government for compensation to British subjects. They proved their title to the above-mentioned Comté and estates of Lussan in Languedoc, its forfeiture and sale by the French revolutionary Government in 1792 and 1794, and their British descent.



In 1827, the British commissioners refused the claim on the ground that in consequence of the decree of forfeiture pronounced by the Parliament of Scotland, in 1695, against the Earl of Melfort, his descendants had ceased to be British subjects, and that James Lewis Drummond, Duc de Melfort, the possessor of the estates at the time, was besides styled a colonel and an émigré (1).

In 1834, an appeal was made to the Privy Council, for the amount of 41,000*l.*, fixed by the commissioners, exclusive of the interest until liquidation at 5 p. 100, and the case was carefully gone into, when it was established that John Drummond, from whom the claimants took their current of blood, was born in Scotland, in May, 1682, and was 13 years of age at the date the decree of forfeiture was pronounced against his father, the Earl of Melfort (in 1695), and that as no attainder had ever been pronounced against him, or any of his descendants, his blood was not tainted; also that James Lewis Drummond, Earl Duc de Melfort, his grandson, who lost the Estate of Lussan, in 1792, as grandson of a British born subject, had by statute all the rights and privileges of a British born subject.

On the 10th of April, 1834, the appeal was heard, and the Vice Chancellor, after pronouncing judgment, admitting that the reasons on which the commissioners had decided could not be supported, nevertheless disallowed the claim on the ground (a new ground), that James Lewis Drummond, Earl and Duc de

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(1) There is not a *single instance* of a claim for immovable property in which the British owner of the estate is not described as an émigré; the name of the British ambassador was inserted on the list of émigrés. And in the case of Comte de Wall a favorable decision was given, and he obtained compensation as a British subject. Comte de Wall's father quitted Ireland in 1746, and entered the French service, in which he attained the rank of Major-General and was created a Comte and a Chevalier de Saint-Louis; he married a French lady, and acquired landed property in France by marriage; his son, the appellant before the P. C., was born in France, 1768, and the father, Comte Patrick Wall's property was confiscated as the property of an émigré, and sold in 1794. His son, the appellant, returned to France with the Bourbons in 1814, and was in the French army, and when he made his claim for compensation as a British subject, and obtained it in 1837, he was not only a French Comte and a Chevalier de Saint-Louis, but a general in the French service at the time. (See Knapp's Reports, vol. III., p. 13.)



Melfort, who was possessed of the estates when they were seized in 1792, was by the law of France a French subject, as well as a British subject by the laws of England, *as he was born at Avignon* "in France," in the year 1750. No one was prepared on this new point, as many other claimants, whose claims had been favourably adjudged, were born in France, and it had been decided in various other cases, that compensation was to be allowed to *all British subjects* who had not obtained regular and complete letters of naturalisation in France (1).

And on this new point, which formed no part of the award of the commissioners, or of the appeal, and which was in direct contradiction to former decisions, the Drummond claim was rejected. Although no letters of naturalisation were ever applied for, or obtained by James Lewis Drummond, Earl and Duc de Melfort, or any of his predecessors; and although James Lewis Drummond, Earl Duc de Melfort, was (as well as his brother and successor Charles Edward Drummond, Earl Duc de Melfort) undeniably a British subject by descent, and a *British subject only*, they were refused compensation as British subjects, out of the funds paid over by France, for the compensation of *all British subjects* for the loss of property in consequence of the French Revolution; and told in 1834 they were to claim compensation out of the fund granted by Charles X in 1830 to the French émigrés, when neither the proprietor of the forfeited estates, James Lewis, Earl and Duc de Melfort, nor the claimant his brother, Charles Edward, Earl and Duc de Melfort, were ever French subjects at all. While Comte de Wall, who was born in France, whose father was a French General and a French Comte, was born in France, and who at the time he made the appeal (1837) was not only a French subject by birth, and a French Comte, but actually a major-general in

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(1) In Mr. Fanning's case, Sir William Grant rescinded the award of the commissioners, and directed them to give Mr. Devereux (Mr. Fanning's representative) compensation. The point was: whether Mr. Fanning had not lost his claim to compensation, by having obtained in 1776 letters of naturalisation and nobility in France, and having continued after that time to live in France, enjoying the privileges of a French subject: and to call himself by his French title of Comte de Fanning until the French revolution. But his naturalisation was not considered sufficiently proved as the proper *official seal* was *not* affixed to his letters of naturalisation? and he obtained compensation.

the French service at the time, received full compensation and the full amount of interest to the day of liquidation.

This decision, in the Drummond claim, was equally unfounded in law as it was in fact; as according to the law of France, James Lewis Drummond, fourth Earl Duc de Melfort, was *not* a French subject in 1792, as well as a British subject, as he was *not born* in France, but at Avignon, which did not become part of France until 1797, when he was already 47 years of age (1).

From this decision of the Privy Council there was no appeal, but the judgment pronounced by the Vice Chancellor was submitted to the most distinguished members of the French Bar, Philippe Dupin, Berryer, Delangle, Merlin, De Vatismenil, Parquin, Dupin, president of the Chamber of Deputies, who unanimously declared, in an elaborate jurisconsultum, that the Privy Council had made a mistake in fact, as well as in French law, for that James Lewis Drummond, Earl Duc de Melfort, was not born in France, and that even had he been born in France, it only gave him the privilege at his majority to claim to become a French subject, and that such claim could only be obtained by a regular application and grant of letters of naturalisation.

In 1840, the present (Earl of Perth and Melfort) Duc de Melfort, on succeeding to the representation of the family, established his descent, his position in France, and his claim to the French honours, before the Privy Council of France, and the Tribunal de la Seine. In a procès with the Trésor Royal, the

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(1) The position in France of all the followers of the Stuarts was entirely exceptional, as by decrees and letters from Louis XIV and Louis XV (See Pothier's Collection de Jurisprudence, at the word "Anglais"), they were granted in many respects the privileges of French subjects without being naturalised, and remained permanently in France as *Foreigners, but as favoured Foreigners* until the proclamation of the Constitution in France in 1791, when all *favours and privileges ceased*. James Lewis Drummond, Duc de Melfort, had emigrated to Spain in 1790, and entered the Spanish service as Major-General; he was not born in France, and never resided or was domiciled there after 1790; and all privileges having ceased by the constitution of 1791, in 1792 and 1794, when his property was forfeited, he was solely a *British subject*, as he nor any of his ancestors were ever naturalised in France; and the clauses of the constitution of 1791 did not apply to him, as he was not born in France or domiciled there in 1791.

Minister of Finances having disputed his position in France, the whole pedigree and position of the family in France, from 1689, when they emigrated from Scotland to France, to 1840, was carefully investigated and discussed by the most eminent French lawyers, Mr. De Verdières, Avocat au Conseil d'Etat, and Philippe Dupin, for the Duc de Melfort, M. Barrot, now Chancellor of France, and M. Termaux, Avocat du Roi, for the Trésor Royal, when Mr. Barrot concluded his speech by saying: "Si, en fait, le Tribunal juge que M. de Melfort est Français, le procès aura encore pour résultat heureux de faire cesser les doutes que pouvait laisser subsister la position de M. le Duc Drummond de Melfort, et de rattacher d'une manière complète à la France une famille illustre, un nom glorieux."

And by a judgment pronounced the 12th of December, 1841, it was decided: "That the only member of the Perth and Melfort family, who had *legally become a French subject*, was Léon Maurice Drummond, Comte de Melfort (the father of the Earl of Perth and Melfort), because he was born at the château de Lussan in France, in 1761, that he was a Colonel in the French service in September, 1791, and that he was domiciliated in France in September, 1791, when the Constitution was proclaimed, the third article of which declared that all persons born in France and who were domiciled there at that time *became French citizens by law*." The Duc de Melfort, on succeeding to the French honours, in 1840, being desirous to ascertain the exact position his family had acquired in France, during a century and a half, availed himself of the refusal made by the French Treasury to continue to pay to the late Duchesse de Melfort (the widow of general Comte Rapp, Peer of France) her pension as widow of a French general in chief, in consequence of her having married a person who had *not* the rights of *Citizenship in France*, the case went before the Privy Council of France, and referred after to the Tribunal de la Seine (on account of the état civil), when the Duc de Melfort proved his pedigree from the arrival of his family in France, in 1689, and his succession to the French honours of Duc de Melfort and Comte de Lussan, etc., and his right of citizenship in France. The judgment declares that: "Attendu que Léon Maurice Drummond,

“Comte de Melfort, père du Duc de Melfort, demandeur, né en France, était en France en 1791 ; qu’en 1792, il a été promu au grade de Lieutenant-Colonel ; qu’après avoir quitté le service il s’est même marié en France à une Française, Marie-Luce de Longuemare, le 5 Brumaire, an III (1794), à Sotteville-lès-Rouen, où il était domicilié ; que l’article 2 de la Constitution du 3 Septembre 1791 déclare citoyen Français tous individus nés en France même d’un père étranger, qui avaient fixé leur résidence dans le Royaume ; qu’ainsi il était Français,” (et d’après l’article 10 du Code civil, qui déclare que tout enfant né d’un père Français, en pays étranger, est Français), “déclare le Duc de Melfort citoyen Français.” (1)

While, James Lewis Drummond; Earl Duc de Melfort, the proprietor of the Lussan Estates, was *not* born in France, had left the French service and emigrated to Spain in 1790, and entered the Spanish service as a general; and he died in Spain in 1800, never having returned to France, and was therefore not even domiciled there at the time of the proclamation of the Constitution of September, 1791, which would have been the only way in which he could possibly have been *made a French subject*, had he been born in France, without having applied for and obtained in the legal way regular letters of naturalisation, which he never did apply for, nor did any other member of the family ever apply for or obtain such letters; the Perth and Melfort family during all their residence in France only enjoyed the privileges which had been granted by the various Kings of France to the Scotch in general, and the privileges granted by Louis XIV and Louis XV, to the followers of the Stuarts after 1689.

And from this judgment of 1834 given by the judicial Committee of the British Privy Council, although founded on an error in the French law, and an error in fact, the claimants have been

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(1) Consequently, the only two members of the Drummond family who became French citizens by law, were Léon Maurice Drummond, Comte de Melfort, the father of the Earl of Perth and Melfort, Duc de Melfort, on account of his birth in France, in 1761, and of his being in the French service and domiciliated in France, in 1791, when the constitution was proclaimed, and the present Duc de Melfort, by law of a French subject as son a French subject.



advised they have no *legal right* to a fresh hearing before the judicial Committee of the British Privy Council, or to any other legal redress, and that their only course therefore is humbly to call the attention of the Queen to the great hardship of the case and to the strong moral claim the Earl of Perth and Melfort has to a reconsideration of his claim, and humbly to state that there is a precedent in the case of Dumaresq and le Hardy, for such a reconsideration having been granted by the Privy Council on a point of *French law*, which had been misunderstood by the Privy Council, consequently it would be a positive denial of justice, now to refuse such a rehearing on the points of French law, to the Earl of Perth and Melfort. Particularly as the case of Dumaresq and le Hardy was reheard and favourably adjudged at last by the Privy Council on similar points of French law, which had been misunderstood by the Privy Council of England.

Therefore, from the above, it is proved how singularly unfortunate and exceptional the position of the Earl of Perth and Melfort truly is. In Scotland all the property which should have descended to him has been lost by forfeitures, and the large property acquired by marriage by his great-grandfather in France, also lost by forfeiture, no compensation having been applied for or obtained from the French Government out of the compensation granted to the French émigrés in 1830 by the French Government, as James Lewis Drummond, fourth Earl and Duc de Melfort was *not born in France*, and was not a French subject, and Charles Edward Drummond, fifth Earl, and Duc de Melfort, his next brother and his heir, was also not born in France and was not a French subject by the laws of France, and never claimed compensation in France, his claim for compensation as a British subject, *which he was by law*, having been before the Commissioners since 1820.

Therefore, the position of the Earl of Perth and Melfort is exceptional and solitary in its wonderful hardship. As besides from the arrangements made regarding the hereditary revenues of Scotland, when King George IV renounced to them on a fixed sum being agreed to be paid in lieu thereof out of the Consolidated Fund, the Government can grant no compensation out



of the hereditary revenues of Scotland, without the sanction of an Act of Parliament, and the pension list is now also confined to small pensions granted for literary purposes.

The large sums of money paid over by the French Government for the purpose of giving compensation to all British subjects who had experienced losses in France, in consequence of the French Revolution, have now been disposed of partly in liquidating British claims; but large sums have also been employed for other purposes, entirely distinct and in no way connected with the persons included in the treaty, and to whom, as British subjects who had lost property in France, the French Government granted compensation. In that manner the fund is nearly exhausted; but that should not affect the justice of the claim of the Earl of Perth and Melfort, as the British Government is by treaty bound to repay over to France whatever balance may remain after all the just claims of British subjects on that fund are satisfied; but every farthing paid over by France must be applied to that purpose and the balance remaining after all just claims are paid to British subjects, who had lost property by the French Revolution must according to the treaty be repaid with interest at 5 p. 100 to France; so that even if the fund is exhausted by other expenses, as money to the full amount must be found to repay to France, there is no excuse for not hearing and satisfying the Drummond claim at once.

#### PERTH AND MELFORT.

